



## MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen  
*Chair*

Kenita V. Barrow  
*Vice Chair*

**February 8, 2017**

### **Advisory Opinion 17-01-002**

Employees of a local corporation were involved in negotiating with executive branch officials regarding the construction of a building in the County and matters related to incentives associated with the enterprise. The product of the negotiation was considered by the County Council as the agreed upon approach required consideration of amendments and supplemental appropriations to capital spending and budgeting legislation.

The corporation, which already has a lobbyist registered for it, inquired whether persons who had negotiated with the executive branch on behalf of the corporation would be required to register as lobbyists on behalf of the corporation. The corporation stipulated that no person on the negotiating team met the threshold for registering for seeking to influence executive action pursuant to 19A-21(a)(2) at any time. Also, the corporation inquired whether the corporation's registered lobbyist, in filing required semi-annual activity reports, should include expenses associated with the negotiations with executive branch officials in the reports for the periods in which the negotiations occurred.

The thresholds for lobbying registration are set forth in 19A-21(a) of the County Code. The law has separate thresholds for lobbying for legislative action and lobbying for executive or administrative action. Unlike the lobbying registration threshold for legislative action, the payment of compensation to a person to influence executive or administrative action by a County agency is not counted towards meeting the lobbying registration threshold. See Advisory Opinion 13-3-004, May 21, 2013. The lobbying registration threshold for seeking to influence executive or administrative action focuses on just the provision of services or conveyance of benefits to County employees rather than all amounts spent or compensation received in connection with efforts to influence action, as is the case with the threshold for registration for seeking to influence legislative action.

Noting that the corporation already has a registered lobbyist, no additional obligation was created for any person to be registered as a lobbyist for the corporation as the lobbying registration threshold associated with lobbying for executive action was not met. That the agreement arrived at between the corporation and the executive branch required (and presumably was known to require) subsequent consideration by the County Council, did not turn communications intended to influence executive action into communications for legislative action.

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Additionally, the corporation's expenditure of compensation to its representatives to try to influence executive action and other expenses that do not count toward the thresholds for lobbying registration is not required to be reported on activity reports filed by the corporation's registered lobbyist. Section 19A-25 of the County Code requires each registered lobbyist to report "total expenditures on lobbying." While "lobbying" is defined by 19A-4(k) as including attempts to influence legislative, executive or administrative action, the Commission concludes that the reporting requirement was not intended to include expenses which would not count towards any registration threshold. Only expenses that would be counted towards registration thresholds in 19A-21 should be included in activity reports required by 19A-25.

For the Commission:



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Steven Rosen, Chair